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Paper No. 5

Bernard Vining
6419 South Troy Street
Chicago, IL 60629

COPY MAILED

JAN 21 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Vining :
Application No. 10/080,260 :
Filed: February 21, 2002 :
For: SMOKE DETECTOR WITH RF RESET :
SWITCH :

This is a decision on the petition filed December 29, 2003, which is being treated as a petition under 37 CFR 1.181 (no fee) to withdraw the holding of abandonment of the above-identified application.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition To Withdraw the Holding of Abandonment." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed March 19, 2002. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on May 19, 2002. A Notice of Abandonment was mailed on December 3, 2003.

Petitioner contends that the Notice of Missing Parts was never received.

In the absence of any irregularity in the mailing of the Office action, there is a strong presumption that the Office action was properly mailed and received. In order to overcome this presumption, a petition alleging non-receipt of an Office action must:

- (1) include a statement that the Office action was not received,
 - (2) attest that a search of the file jacket, or location where the paper would have been placed, has been made, and
 - (3) include any additional information which may be required by the Commissioner.
- See MPEP 711.03(c)(II).

Petitioner should discuss how was processed when received during March of 2002. Did petitioner directly handle all mail? Has all mail related to the instant application been kept in one location? If yes, has a search of that location been made? Petitioner should fully discuss the handling of all mail to show that it is more likely than not the mail was lost prior to receipt rather than lost after being received by petitioner.

A review of the declaration filed with the petition reveals that petitioner lists his country of residence as "Cook." It appears that petitioner may have read the word "country" as the word "county." Petitioner should complete and submit the attached declaration using the correct address.

Anytime a signed declaration is submitted after filing an application, rather than at the same time, a fee of \$65 must be paid. Any request for reconsideration should be accompanied by \$65.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 872-9306
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

If a request for reconsideration is filed, and a decision on the new petition is not received within three months, petitioner may wish to call the number below to check on the status of the renewed petition.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



Charles Steven Brantley
Petitions Attorney
Office of Petitions

Attached: Declaration Form